United Nations CCPR/C/CYP/CO/4/Add.1

International Covenant on Civil and Political Rights

Distr.: General
15 March 2018

English only

Human Rights Committee

Concluding observations on the fourth periodic report of Cyprus

Addendum

Information received from Cyprus on follow-up to the concluding observations*

[Date received: 19 December 2017]

* The present document is being issued without formal editing.

GE.18-03998(E)

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Recommendation 5

1. The issue whether the Commissioner for Administration has sufficient staff to carry out her work, relates to the prevailing situation in Cyprus as a result of the economic crisis which has led to the freezing of filling of vacant posts in the whole of the Public Sector. Satisfying financial and human resources of the Ombudsman will be part of the overall reassessment of the economy of the county.

2. The issue of the Commissioner for Administration for being able to appoint directly her staff relates to the fact that the staff of her Office, for the time being, are public servants (which allows them security of tenure, emoluments and allowances) and, therefore, by virtue of Article 125 of the Constitution of Cyprus are appointed by the Public Service Commission, an independent organ of the Republic established by the Constitution, having competence to appoint the staff of Ministries and Government Departments as well as the staff of independent Offices of the Republic, such as the Office of the Attorney General, the Auditor General and the Law Commissioner. It also appoints the non-judicial staff of the Judiciary.

Recommendation 10

3. Concerning subparagraph (b) of the Committee's evaluation, on the effectiveness, transparency, independence and impartiality of investigations of missing persons from both communities, please note:

(i) For the purpose of complying with Cyprus's international obligations arising out of Articles 2 and 3 of the European Convention on Human Rights, as these rights have been interpreted by the European Court of Human Rights within the specific context of the Turkish Cypriot missing persons in Cyprus (see *Emin and others v. Cyprus* and other applications decision, no. 59623/08, decision of 3 April 2012, paragraph 30),[1] the Attorney General of the Republic directs the Chief of Police to carry out investigations to ascertain the circumstances of death of Turkish Cypriot missing persons once their remains have been found and/or identified. These investigations are carried out by a special unit within the Police, entitled "Missing Persons Investigating Team", comprised of experienced investigators. At the investigation stage, the Police takes statements from missing persons' relatives and in the absence of any complaint from relatives, it publishes an announcement at the daily Turkish Cypriot press by which it calls the relatives of the missing person to get in touch with the Police in order to arrange for their statement to be taken. Moreover, inquiries are made with a number of authorities/organizations which might possibly have any files or records in their keeping, giving leads for investigative steps, including Cyprus Central Intelligence Service (Missing Persons Department), Cyprus Red Cross, the Greek Cypriot member of the CMP, UNFICYP, the Missing Persons Service, the National Guard Authorities and the Police Operations Office. The Police also extend search to the Public Records Office. They take statements from witnesses in the villages where the bodies of the missing persons had been found, and where events were reported to have occurred. The Police pursue all available leads and directions for collecting further evidence in respect of each case. The investigation is supervised by the Attorney General of the Republic, who may refer the case back to the Police with instructions to take further investigative steps. The decision as to whether prosecutions will be ordered rests with the Attorney General who studies the investigation files with all evidential material collected and

[1] Paragraph 30 states: "[…] the Court considers that the discovery of the remains of the applicants' relatives bearing signs of violence and buried in circumstances highly suggestive of extra-judicial execution or murder triggered an obligation on the authorities to take investigative steps to identify the remains, the likely cause and circumstances of death and the identity of the perpetrators of any unlawful violence".

reaches a conclusion as to whether there is sufficient evidence to bring prosecutions before a court of law;

(ii) The European Court of Human Rights had the opportunity to review/examine four such investigations and reached the following conclusions:[2] First, with regards to the investigation's impartiality and independence, the European Court of Human Rights noted: "There is no indication of any links existing between the Police Authorities or Attorney General and any political figures or organizations purportedly tainted by involvement in events in 1963–1964. The applicants' allegations largely amount to a general assertion that no Cypriot authority could claim to be independent of past events or those involved in them. The Court sees no basis on the materials or arguments before it for finding any such theoretical impossibility for the Republic of Cyprus to carry out an effective investigation.";[3] Second, with regards to the effectiveness of the investigation, the European Court of Human Rights noted: "[…] the police have followed numerous leads in the three cases, making enquiries with official bodies and organizations, updated statements from the relatives of the deceased, looking for witnesses in the villages where the bodies were found or where events were reported to have occurred and tracking down to the extent possible the names of potential suspects which have been mentioned by witnesses. […] those named as being incriminated in events who have been found and questioned by the police, all have denied any knowledge of, or participation in, any unlawful acts.";[4] Third, with regards transparency of the investigation, the European Court of Human Rights noted: "the Attorney General issued reports on the investigations".[5] The Court observed that "[these] reports were detailed, gave relevant and plausible reasons for the decision not to prosecute and made it clear that if any further evidence was uncovered during other investigations that this decision would be reviewed";[6]

(iii) The Government submits that all pending and/or completed investigations of this kind are investigated (or have been investigated) in the same rigor in terms of effectiveness, transparency, independence and impartiality as the above four investigations.

4. Concerning subparagraph (c) of the Committee's evaluation, i.e. to ensure that the perpetrators are prosecuted and punished where appropriate, it is clarified that the criminal investigations referred to above are capable of leading to prosecution and punishment, provided there is sufficient evidence, to justify bringing a case before a court of law. Prosecutions will take place only where appropriate, as the Committee also recommends. In the above four investigations which have been reviewed/examined by the European Court of Human Rights in the applications of *Gurtekin and others v. Cyprus* and *Semra Emin v. Cyprus*, the relatives of Turkish Cypriot missing persons complained that the said investigations have ended without prosecutions. On this issue the European Court of Human Rights rightly stated, in the *Gurtekin decision* that: "a prosecution, particularly on such a serious charge as involvement in mass unlawful killings, should never be embarked upon lightly as the impact on a defendant who comes under the weight of the criminal justice system is considerable, being held up to public obloquy, with all the attendant repercussions on reputation, private, family and professional life".[7]

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[2] Three criminal investigations had been reviewed/examined in the *Gurtekin and others v. Cyprus decision*, nos. 60441/13, decision of 11 March 2014, while one criminal investigation had been reviewed/examined by the *Semra Emin Mustafa and others v. Cyprus decision*, no. 1476/14, decision of 23 September 2014.

[3] *Gurtekin and others v. Cyprus*, paragraph 31.

[4] *Ibid.*, paragraph 25.

[5] *Ibid.*, paragraph 24.

[6] *Ibid.*, paragraph 29.

[7] *Ibid.*, paragraph 27.

5. On the issue of adequate compensation, it is always open for relatives of missing persons, Greek and Turkish Cypriots alike, to pursue their complaints for human rights violations and/or tort before a court of law exercising civil jurisdiction on the basis of *Yiallourou v. Nicolaou* judgment. In this regard the Government refers to the case of *Palma v. Attorney General* (civil appeal no. 44/13) and *Pashias v. Attorney General* (civil appeal 381/2010). In the former case the Appeal Court upheld the first instance court's finding of a violation of Article 2 of the European Convention on Human Rights (right to life — procedural limb) and awarded damages to the claimants. In the latter case the Appeal Court set aside the judgment of the first instance court and found no violation of Article 2 of the European Convention on Human Rights.

6. Regarding the Committee on Missing Persons in Cyprus (CMP), it is reminded that it is a bi-communal body established in 1981 by the leaders of the Greek Cypriot and Turkish Cypriot Communities with the participation of the United Nations. Following the establishment of an agreed list of missing persons, the CMP's objective is to recover, identify, and return to their families, the remains of 2001 persons (502 Turkish Cypriots and 1,493 Greek Cypriots) who went missing during the inter-communal fighting of 1963 to 1964 and during the Turkish military invasion in Cyprus in 1974. The vast majority of those persons went missing during the Turkish invasion of Cyprus in 1974, in the areas that are, to this day, under Turkish military occupation and effective control. As of January 2017, according to the CMP data, 309 Turkish Cypriots and 949 Greek Cypriots are still missing.

7. It is reminded that Turkey's responsibility towards this humanitarian issue was reaffirmed by the European Court of Human Rights in the Fourth Interstate Application of Cyprus against Turkey (Application No. 25781/94). The Court ruled, on 10 May 2001, that Turkey's authorities had never investigated claims by relatives that missing persons had disappeared after being detained, in circumstances where there was real cause to fear for their welfare. More than 40 years after their disappearance and almost 16 years after the Court's Judgment in the 4th Interstate Application of Cyprus v. Turkey, the latter has failed to fully implement the Court's decision. The said Judgment is reinforced by the Judgment of the ECHR of May 14th, 2014, where by the Court held that Turkey was to pay Cyprus €30million in respect of the non-pecuniary damage suffered by the relatives of the missing persons, and €60 million in respect of the non-pecuniary damage suffered by the enclaved Greek-Cypriots residents of the Karpas peninsula.

8. We trust that the Committee will issue a specific question/query/recommendation to Turkey, during Turkey's evaluation under the International Covenant on Civil and Political Rights, about Turkey's efforts and specific actions to establish the fate and conditions of disappearance of all the Greek Cypriot missing persons, resulted from the Turkish military invasion in Cyprus in 1974.

9. Concerning subparagraph (a) of the Committee's evaluation please note: The Government continues to do its utmost to facilitate the solution of the humanitarian issue of the missing persons in Cyprus. The Republic of Cyprus, being the biggest donor to the CMP since its practical establishment in 2006 (total contribution: €2,410,700), only behind the European Union's collective contribution (where the Republic of Cyprus is also a contributor), spares no effort in supporting and assisting the CMP in its work and the fulfillment of its mandate. All Cypriots and the international community, expect Turkey to do the same.

Recommendation 23

10. After the withdrawal of the Turkish Community from the organs of the State in 1963 following a decision of its leadership, the Constitutional provisions providing that the Public Service shall be composed as to thirty per cent of Turks, have been rendered temporarily ineffective. In light of that, the official language of the State currently used, is mainly the Greek language. In addition, following the coup and the Turkish invasion of 1974, and the subsequent occupation of one third of Cyprus territory, as well as the illegal proclamation of a pseudo state in the occupied part of the Republic of Cyprus, United Nations Security Council Resolutions 541 (1983) and 550 (1984): (a) Deplore the declaration by the Turkish Cypriot authorities of the purported succession of part of the

Republic of Cyprus, and (b) Reiterate the call upon all States not to recognise the purported state of the "Turkish Republic of Northern Cyprus" set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity. Accordingly, the Turkish Cypriots' unwillingness to participate in the Republic of Cyprus' public service is mainly due to the relevant guidance and instigation by their leadership, as well as, to their decision to live and work, under an illegal entity, condemned by the United Nations and the International Community. For these reasons any candidate wishing to compete with other candidates for any post in the Public Service mainly must meet the requirement of "very good knowledge of the Greek language". Obviously, Turkish Cypriots can compete with other candidates for a post in the Public Service, provided they meet the relevant requirements/qualifications of the post, including the language requirement. It is, of course, a different matter when Turkish Cypriots apply to any organ of the State, or resort to domestic Courts using the Turkish language.

11. However, in order to facilitate any Turkish Cypriot wishing to compete to posts in the Public Service, special provisions were introduced in the relevant legislations, making the knowledge of the Turkish language, at the corresponding level of knowledge with the Greek language, available. For example, such provisions exist in the Scheme of Service for the entry posts in the Foreign Service, i.e. the posts of Attaches, and for Offices at the Press and Information Office, inter alia.